



## STATE OF WISCONSIN Division of Hearings and Appeals

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In the Matter of

Milwaukee Enrollment Services, Petitioner

vs.

██████████, Respondent

DECISION

Case #: FOF - 177858

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Pursuant to petition filed November 8, 2016, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Milwaukee Enrollment Services to disqualify ██████████ from receiving FoodShare benefits (FS) one year, hearings were held on December 19, 2016 and February 7, 2017 at Milwaukee, Wisconsin. On December 19, 2016, the respondent did not appear for the scheduled hearing. A message was left on the respondent's voicemail. Respondent returned the call on December 20, 2016. DHA agreed to reschedule the hearing. A hearing was scheduled for January 10, 2017. On January 2, 2017, the respondent requested that the hearing be rescheduled. The hearing was rescheduled to February 7, 2017. A notice of the hearing was issued to the respondent on January 5, 2017. The respondent did not appear for the hearing on February 7, 2017.

The issue for determination is whether the respondent committed an Intentional Program Violation (IPV).

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

Respondent:

██████████  
████████████████████  
████████████████████

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**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

## FINDINGS OF FACT

1. The respondent (CARES # [REDACTED]) is a resident of Milwaukee County who received FS benefits in Milwaukee County from July 28, 2014 through August 1, 2016.
2. On July 28, 2014, the respondent applied for FS benefits. She reported a household size of three. She reported she was pregnant.
3. On July 31, 2014, the agency received an employment verification from [REDACTED] [REDACTED] [REDACTED] reporting that the respondent worked 30 – 35 hours/week with a gross salary of \$2000/month.
4. On August 5, 2014, the agency issued a Notice of Decision to the respondent informing her that she would receive FS benefits of \$72/month effective August 1, 2014 for a household of three. The notice informed her this was based on gross monthly household income of \$2,648.90 which included \$2000/month earned income from [REDACTED] and her daughter's SSI benefits of \$648.90/month. It was also based on rent expense of \$1200/month. The notice also informed the respondent of the requirement to report any changes in household composition within 10 days and to report to the agency by the 10<sup>th</sup> day of the next month if her gross monthly household income exceeded \$1,310.83.
5. On September 8, 2014, the agency issued a Notice of Decision to the respondent informing her that she would receive FS benefits of \$86/month effective October 1, 2014 for a household of three. This was based on gross monthly household income of \$2,648.90 and rent of \$1200/month.
6. Respondent submitted subsequent renewals on November 29, 2014 and May 14, 2015. She continued to report gross household income of \$2000/month from [REDACTED] [REDACTED] [REDACTED] and reported her daughter's SSI benefits. Employment verifications from [REDACTED] were submitted to the agency on December 12, 2014 and May 27, 2015 verifying that respondent received \$2000/month in gross wages.
7. On May 27, 2015, an agency worker noted a discrepancy in respondent's reported income and income reported by respondent's employers to the state. Quarterly wages of \$15,000 reported on the state wage record for the 3<sup>rd</sup> and 4<sup>th</sup> quarters of 2014 and 1<sup>st</sup> quarter of 2015. The case was pended for income verification.
8. On June 20, 2015, the agency issued a Notice of Decision to the respondent informing her that her FS benefits end July 1, 2015 due to failure to provide required information regarding her income.
9. On August 20, 2015, the respondent submitted a new FS application. She reported a household size of four. She reported her employment at [REDACTED]. She reported her daughter's SSI. She submitted employment verification and pay statements from [REDACTED] reporting gross monthly income of \$2000.
10. On August 21, 2015, the agency issued a Notice of Decision to the respondent informing her that she would receive FS benefits of \$51 for August, 2015 and \$132/month effective September 1, 2015 for a household of four. The notice informed her this was based on \$2000 earned income from [REDACTED] [REDACTED] and \$743.48/month in SSI benefits for her daughter. The notice also informed her that if her household's total gross income exceeded \$2020.83, she must report it by the 10<sup>th</sup> day of the next month.
11. On January 4, 2016, the respondent submitted a Six Month Report Form. She reported a household size of four. She reported no change in her employment or household income.
12. On January 13, 2016, the agency issued a Notice of Decision to the respondent informing her that there was no change in her FS benefits. It also informed her to report to the agency by the 10<sup>th</sup> day of the next month if her gross monthly household income exceeded \$2,020.83 or if she had any change in household composition.
13. On February 3, 2016, the agency received an employment verification from [REDACTED] reporting the Petitioner worked 30 – 35 hours/week and received a gross salary of \$2000/month.
14. On February 23, 2016, an agency worker noted a discrepancy in respondent's reported wages and the state wage record. The quarterly wages for the 3<sup>rd</sup> and 4<sup>th</sup> quarter of 2015 were reported as \$24,000.

15. On March 24, 2016, the agency updated the respondent's case with information that respondent's mother owns [REDACTED] and respondent was the president.
16. On March 28, 2016, the agency issued a Notice of Decision to the respondent informing her that she would receive \$137/month in FS benefits for a household of four effective April 1, 2016. This was based on gross monthly household income of \$2743.48. She was advised to report to the agency by the 10<sup>th</sup> day of the next month if her gross monthly household income exceeded \$1335 and to report within 10 days if there was any change in household composition.
17. On May 23, 2016, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would end on July 1, 2016 due to income exceeding program limits. This was based on gross monthly household income of \$8743.48 including \$8000/month from [REDACTED] [REDACTED] [REDACTED] and \$743.48 from her daughter's SSI benefits.
18. Respondent has been the licensee of record since 2008 for [REDACTED], a group home licensed by the [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. Respondent is also listed as the Registered Agent for [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED], according to Wisconsin Department of Financial Institutions records.
19. The state wage record for the respondent reports the following gross wages were paid to the respondent from [REDACTED]:

20. On June 1, 2016, the agency issued FS Overpayment Notices to the respondent informing her that the agency intends to recover an overissuance of FS benefits in the total amount of \$3,289 for the period of August 1, 2014 – June 30, 2015 and August 20, 2015 – June 30, 2016. Respondent did not appeal the overpayment actions.
21. On November 14, 2016, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that the respondent intentionally under-reported her income.
22. The respondent failed to appear for the scheduled February 7, 2017 Intentional Program Violation (IPV) hearing and did not provide any good cause for said failure to appear.

An intentional program violation of the FoodShare program occurs when a recipient intentionally does the following:

*FoodShare Wisconsin Handbook*, § 3.14.1; see also 7 C.F.R. § 273.16(c) and Wis. Stat. §§ 946.92(2).

intentional violation; it cannot disqualify the entire household. Those disqualified on grounds involving the improper transfer of FS benefits are ineligible to participate in the FoodShare program for one year for the first violation, two years for the second violation, and permanently for the third violation. Although other family members cannot be disqualified, their monthly allotments will be reduced unless they agree to make restitution within 30 days of the date that the FS program mails a written demand letter. 7 C.F.R. § 273.16(b).

7 C.F.R. §273.16(e)(4) provides that the hearing shall proceed if the respondent cannot be located or fails to appear without good cause. The respondent did not appear or claim a good cause reason for not attending the hearing. Therefore, I must determine whether the respondent committed an IPV based solely on the evidence that the petitioner presented at hearing.

In order for the petitioner to establish that an FS recipient has committed an IPV, it has the burden to prove two separate elements by clear and convincing evidence. The recipient must have: 1) committed; and 2) intended to commit a program violation per 7 C.F.R. § 273.16(e)(6). In *Kuehn v. Kuehn*, 11 Wis.2d 15 (1959), the court held that:

Defined in terms of quantity of proof, reasonable certitude or reasonable certainty in ordinary civil cases may be attained by or be based on a mere or fair preponderance of the evidence. Such certainty need not necessarily exclude the probability that the contrary conclusion may be true. In fraud cases it has been stated the preponderance of the evidence should be clear and satisfactory to indicate or sustain a greater degree of certitude. Such degree of certitude has also been defined as being produced by clear, satisfactory, and convincing evidence. Such evidence, however, need not eliminate a reasonable doubt that the alternative or opposite conclusion may be true. ...

*Kuehn*, 11 Wis.2d at 26.

*Wisconsin Jury Instruction – Civil 205* is also instructive. It provides:

Clear, satisfactory and convincing evidence is evidence which when weighed against that opposed to it clearly has more convincing power. It is evidence which satisfies and convinces you that “yes” should be the answer because of its greater weight and clear convincing power. “Reasonable certainty” means that you are persuaded based upon a rational consideration of the evidence. Absolute certainty is not required, but a guess is not enough to meet the burden of proof. This burden of proof is known as the “middle burden.” The evidence required to meet this burden of proof must be more convincing than merely the greater weight of the credible evidence but may be less than beyond a reasonable doubt.

Further, the *McCormick* treatise states that “it has been persuasively suggested that [the clear and convincing evidence standard of proof] could be more simply and intelligibly translated to the jury if they were instructed that they must be persuaded that the truth of the contention is highly probable.” 2 *McCormick on Evidence* § 340 (John W. Strong gen. ed., 4<sup>th</sup> ed. 1992).

Thus, in order to find that an IPV was committed, the trier of fact must derive from the evidence a firm conviction as to the existence of each of the two elements even though there may be a reasonable doubt as to their existence.

In order to prove the second element, i.e., intention, there must be clear and convincing evidence that the FS recipient intended to commit the IPV. The question of intent is generally one to be determined by the trier of fact. *State v. Lossman*, 118 Wis.2d 526 (1984). There is a general rule that a person is presumed to know and intend the probable and natural consequences of his or her own voluntary words or acts. See, *John F. Jelke Co. v. Beck*, 208 Wis. 650 (1932); 31A C.J.S. Evidence §131. Intention is a subjective state of mind to be determined upon all the facts. *Lecus v. American Mut. Ins. Co. of Boston*, 81 Wis.2d 183 (1977). Thus, there must be clear and convincing evidence that the FS recipient knew that the act or omission was a violation of the FS Program but committed the violation anyway.

Based upon the record before me, I find that the petitioner has established by clear and convincing evidence that the respondent intentionally violated FS program rules, and that this violation was the first such violation committed by the respondent. The state wage record clearly demonstrates that the respondent earned a significantly higher income than she reported to the agency in applying for benefits. The respondent repeatedly provided inaccurate information regarding her employment and income in numerous applications and renewals. She further failed to report as required when her income exceeded reporting requirements. In addition, the respondent misrepresented her status with [REDACTED] [REDACTED] [REDACTED] by not reporting that she is the licensee/owner/registered agent. She also never reported her status as agent with other corporations. I conclude that the evidence demonstrates that the respondent violated FS regulations by failing to report her employment status and income and that this violation was intentional as demonstrated by her repeated failure to accurately report this information. Therefore, the petitioner correctly seeks to disqualify the respondent from the FS program for one year.

### **CONCLUSIONS OF LAW**

1. The respondent violated, and intended to violate, the FS program rule specifying that FS recipients must provide truthful and accurate information regarding income.
2. The violation specified in Conclusion of Law No. 1 is the first such violation committed by the respondent.

**NOW, THEREFORE,** it is

### **ORDERED**

That the petitioner's determination is sustained, and that the petitioner may make a finding that the respondent committed a first IPV of the FoodShare program and disqualify the respondent from the program for one year, effective the first month following the date of receipt of this decision.

### **REQUEST FOR A REHEARING ON GROUNDS OF GOOD CAUSE FOR FAILURE TO APPEAR**

In instances where the good cause for failure to appear is based upon a showing of non-receipt of the hearing notice, the respondent has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. See 7 C.F.R. sec. 273.16(e)(4). Such a claim should be made in writing to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

### **APPEAL TO COURT**


You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, WI 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing request (if you request one).

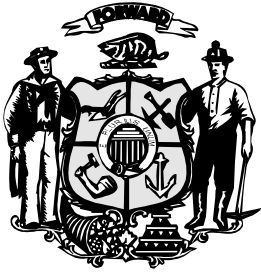
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 23rd day of March, 2017

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals

c: Miles - email  
Public Assistance Collection Unit - email  
Division of Health Care Access and Accountability - email  




## **State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on March 23, 2017.

Milwaukee Enrollment Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability